

IN THE SUPREME COURT OF IOWA

NO. 19-1228

**STATE OF IOWA,
Plaintiff-Appellee,**

vs.

**DANTREON LEVON NEWMAN,
Defendant-Appellant.**

**APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
HONORABLE DISTRICT JUDGE JEFFREY FARRELL (PLEA/
SENTENCING ORDER AND ORDER TO ACCEPT PLEA)**

DEFENDANT-APPELLANT'S FINAL BRIEF

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PROOF OF SERVICE

I hereby certify that on the 30th day of January 2020, I did serve the within Defendant-Appellant's Final Brief on Appellant, listed below, by mailing one copy thereof to the following Defendant-Appellant:

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CERTIFICATE OF FILING

I, the undersigned, hereby certify that I did file a copy of the Defendant-Appellant's Page Proof Brief with the Clerk of Supreme Court, Des Moines, Iowa 50319 by means of the Appellate Electronic Document Management System the same on the 30th day of January, 2020.

/S/ Eric W Manning

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STATEMENT OF THE ISSUES

I. MR. NEWMAN’S TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL

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ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the issues raised involve applying existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

STATEMENT OF THE CASE AND STATEMENT OF FACTS

On March 3, 2019, Dantreon Levon Newman was charged by Trial Information in Polk County case FECR322068 with the crime of Sexual Abuse – 3rd Degree in violation of Iowa Code Section 709.4(1)(b)(2), a Class C Felony. Trial Counsel Conducted Discovery in this matter including a specific request for Brady Materials. (App. 23).

On May 28, 2019, the Defendant entered a plea of guilty to an Amended charge of Lascivious Acts with a Child, a Class D Felony, in violation of Iowa Code Section 709.8(1)(d). (App 46). A Presentence Investigation Report was completed and filed on July 3, 2019. (App. 70). A Sentencing Hearing was conducted on July 10, 2019 (App. pp. 25-28).

At the Sentencing Hearing, Trial Counsel addressed the court about a potential issue concerning Mr. Newman's competency. (App. pp. 53-54). Trial Counsel also expressed the potential of proceeding to trial and using a diminished responsibility defense if Mr. Newman were to be found guilty. (Id.). Trial counsel stated that he had explored these possibilities after

receiving the Presentence Investigation Report and had discussed the ramifications with Mr. Newman. (Id). Trial counsel stated that he agreed to proceed to sentencing even with these potential issues. (Id at 54). Mr. Newman stated that he understood the issues and the Trial Judge stated that he believed that Mr. Newman was competent to continue with sentencing. (Id at 54).

Mr. Newman was found guilty of Lascivious Acts with a Child – Solicitation and sentenced to 5 years in prison and a requirement to sign up for the Sex Offender Registry for a period of ten years. (App. pp. 25-6). This sentence was part of a negotiated plea with the State. (App. p. 58).

Mr. Newman now appeals the District Court’s Orders on Plea and Sentencing and Order to Accept Plea.

I. MR. NEWMAN’S TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL

A. Issue Preservation: A claim of ineffective assistance of counsel is an exception to general rule of error preservation. *State v. Brothern*, 832 N.W.2d 187, 191 (Iowa 2013). The Court can resolve the claim of ineffective assistance of counsel on direct appeal if it finds the record sufficient to do so. *State v. Hildebrant*, 405 N.W.2d 839, 840-41 (Iowa 1987). Additionally, “It is the defendant’s obligation to provide this court

with a record affirmatively disclosing the error relied upon.” *State v. Ludwig*, 305 N.W.2d 511, 513 (Iowa 1981).

B. Standard of Review: When the Defendant alleges denial of a constitutional right, appellate review is de novo based on the totality of the circumstances. *State v. Oetken*, 613 N.W.2d 679, 683 (Iowa 2000); *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). Also, the court reviews a competency determination de novo because it implicates constitutional rights. *State v. Lyman*, 776 N.W.2d 865, 872–73 (Iowa 2010), overruled on other grounds by *Alcala v. Marriot Int’l, Inc.*, 880 N.W.2d 699, 708, n.3 (Iowa 2016).

C. Law: To succeed on a claim of ineffective assistance of counsel, Mr. Newman must show by a preponderance of the evidence: “(1) his trial counsel failed to perform an essential duty, and (2) this failure resulted in prejudice.” *State v. Thorndike*, 860 N.W.2d 316, 320 (Iowa 2015) (quoting *State v. Adams*, 810 N.W.2d 365, 372 (Iowa 2012)); accord *Strickland v. Washington*, 466 U.S. 668, 687 (1984). “Under the first prong, ‘we measure counsel’s performance against the standard of a reasonably competent practitioner.’” *Thorndike*, 860 N.W.2d at 320 (quoting *State v. Clay*, 824 N.W.2d 488, 495 (Iowa 2012)). “Under the second prong, Mr. Newman must establish that prejudice resulted from counsel’s failure to perform an

essential duty.” *Id.* Failure to prove either prong is fatal to the claim. See *State v. Shanahan*, 712 N.W.2d 121, 142 (Iowa 2006). In examining Mr. Newman’s claim, the Court presumes his trial attorney performed their duties competently. See *Thorndike*, 860 N.W.2d at 320. Claims for ineffective assistance of counsel are rooted in the Sixth Amendment to the United States Constitution. *State v. Clay*, 824 N.W.2d 488, 494 (Iowa 2012).

“We presume a defendant is competent to stand trial.” *Lyman*, 776 N.W.2d at 874. The defendant bears the burden of proving his incompetency by a preponderance of the evidence. See *id.* “If the evidence is in equipoise, the presumption of competency prevails.” *Id.* “Moreover, once a court finds a defendant competent to stand trial, the presumption of competency continues unless and until the defendant produces new evidence to the contrary.” *Id.*

The test for competency is whether the Defendant was “suffering from a mental disorder” which prevented him from “appreciating the charge, understanding the proceedings, or assisting effectively in the defense.” See Iowa Code § 812.3(1) (2017). The task for the district court was to decide if the Defendant has “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.”

State v. Lucas, 323 N.W.2d 228, 232–33 (Iowa 1982) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)).

D. Discussion

Mr. Newman was owed a duty of effective assistance of counsel through the Sixth Amendment of the United States Constitution. The First question is whether the counsel failed in an essential duty. *State v. Thorndike* at 320 (Iowa 2015) (quoting *State v. Adams*, 810 N.W.2d 365, 372 (Iowa 2012)); accord *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Trial counsel was aware of Mr. Newman’s mental issues through both the Presentence Investigation Report and his own statements to the Court. (Sentencing Transcript Redacted pp. 2-4). Mr. Newman has been diagnosed with schizophrenia, bi-polar disorder, and utilized special education while in school (Id at 2-3). What is not known through this information is his level of comprehension. While he managed to answer questions directly of the judge, it is unclear as to whether he could adequately explain his understanding of both the plea and the resulting agreement and sentence.

Trial Counsel had a duty to protect his client’s interests and should have requested a screening for competency under Iowa Code Section 812. If he had been examined for his competency, the Court then would have had

adequate information with which to consider Mr. Newman's prior plea and also Mr. Newman's sentencing given his circumstances. A reasonably competent counsel would have had Mr. Newman examined for competency or used Mr. Newman's mental health state to assert a diminished capacity defense. The record is unclear as to whether Trial Counsel and State had negotiations about the possibility of diminished responsibility defense in regards to sentencing. If this information was more complete, the court could have issued a different sentence, including probation.

The second prong of ineffective assistance of counsel requires that a failure by trial counsel resulted in prejudice. Again, if Mr. Newman was found to be not competent, the State would have attempted to restore him to competency and he would not have been sentenced to a prison term with a requirement to participate in the Sex Offender Registry. The court was not able to determine if Mr. Newman was competent through a specific screening for competency, but rather relied on the statements made by Mr. Newman and his trial counsel in court proceedings.

Mr. Newman should have been allowed to either be examined for competency or he should have been allowed to present a diminished responsibility defense at trial court. Instead, he was presented with an offer, which had advantages as opposed to going to trial on the original charge, but

failed to account for his potential mental shortcomings. This demonstrates the prejudice against Mr. Newman as the entirety of his responsibility regarding the charge he plead to was not fully examined by the Court.

For the above stated reasons, the Court should rule that Mr. Newman received ineffective assistance of counsel and that the case should be remanded to District Court for trial.

II. THE TRIAL COURT SHOULD HAVE ORDERED A COMPETENCY HEARING

A. Issue Preservation: The Issue was preserved as part of the record in the sentencing hearing.

B. Standard of Review: The Court reviews whether a trial court should have ordered a competency hearing de novo. *State v. Mann*, 512 N.W.2d 528, 531 (Iowa 1994); *Jones v. State*, 479 N.W.2d 265, 270 (Iowa 1991).

"Evidentiary rulings are generally reviewed for abuse of discretion." *State v. Tipton*, 897 N.W.2d 653, 690 (Iowa 2017); see also *State v. Buenaventura*, 660 N.W.2d 38, 50 (Iowa 2003). If a trial court exercises its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable," an abuse of discretion has occurred. *Buenaventura*, 660 N.W.2d at 50 (quoting *State v. Rodriguez*, 636 N.W.2d 234, 239 (Iowa

2001)); see also *Tipton*, 897 N.W.2d at 690.

C. Law

1. Due Process: Under the United States Constitution, the United States Supreme Court has declared that the conviction of an incompetent defendant violates due process. *Pate v. Robinson*, 383 U.S. 375, 378 (1966). In *Dusky v. United States*, the Supreme Court declared that the test for competence to stand trial is whether the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding . . . and . . . a rational as well as factual understanding of the proceedings against him." 362 U.S. 402, 402, 80 S. Ct. 788, 789 (1960) (per curium).

The U.S. Supreme Court has also declared that in order to comport with due process, there must be a procedural mechanism to determine whether a competency evaluation should be conducted. *Ford v. Wainwright*, 477 U.S. 399, 417 (1986); *Pate*, 383 U.S. at 387. The Supreme Court has said that due process requires a threshold hearing to be held to determine if there is sufficient doubt regarding the defendant's mental capacity to show a need for further evaluation. *Drope v. Missouri*, 420 U.S. 162, 172 (1975).

Further, the Supreme Court has made it clear that a defendant cannot waive the due process right to competency. *Pate*, 383 U.S. at 384.

2. Statutory Provisions. Iowa, like many states, has adopted a statutory procedure to implement the federal due process requirements as enunciated by the Supreme Court. Iowa Code section 812.3(1) provides that "at any stage of a criminal proceeding" a competency hearing is required when the district court finds probable cause that there exist "specific facts showing that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense." The court may make a finding of probable cause either after application by the defendant or the defendant's attorney, or after holding a probable cause hearing on its own motion. *Id.* Probable cause exists for a competency hearing when a reasonable person would believe that there is a substantial question of the defendant's competency. *State v. Kempf*, 282 N.W.2d 704, 706 (Iowa 1979). When the district court orders an evaluation of competency, Iowa Code section 812.4 establishes a timetable for the subsequent competency hearing and the structure of the hearing.

The Iowa Supreme Court has emphasized that whether to hold a

competency evaluation presents a legal question. *State v. Edwards*, 507 N.W.2d 393, 395 (Iowa 1993). As a result, "[t]he trial court's discretion does not play a role" *Id.*

In connection with application of section 812.3, the Iowa Supreme Court has cited *Griffin v. Lockhart*, 935 F.2d 926, 930 (8th Cir. 1991), for the proposition that a hearing should be held when a reasonable trial judge would experience doubt on whether the defendant was competent to stand trial. *Mann*, 512 N.W.2d at 531. *Griffin* also stands for the proposition that "an express doubt by the attorney for the accused is a legitimate factor to consider." 935 F.2d at 930.

D. Discussion

Mr. Newman's statutory rights under Iowa Code Section 812, Section 9 of the Iowa State Constitution, and the 14th Amendment U.S. Constitutional due process rights under US Constitution. were violated when the Court failed to grant a competency hearing sua sponte.

As has previously been discussed in the present appeal, the Trial Attorney did not request a competency hearing for Mr. Newman. However, the Trial Court also could have granted a competency hearing sua sponte. The Court did not have on the record interactions with the Defendant

regarding competency outside of the Sentencing Hearing. However, prior to the hearing, the Court would have had access to Mr. Newman's PSI report which stated that Mr. Newman suffered from bi-polar disorder, schizophrenia and had special education in school. While none of these factors can solely lead a court to determine that a competency hearing is required, it is valuable evidence regarding Mr. Newman's ability to assist in his own defense and appreciate the severity of the potential punishments that he faced as part of his plea and subsequent sentencing.

The Trial Court is to give great weight based on the statements of trial counsel regarding their client's competency. *United States v. Sandoval*, 365 F. Supp. 2d 319, 321-22, 325-26 (E.D.N.Y. 2005) (relying heavily on the opinions of defense counsel regarding competence). Based on the record, the Trial Court took the statements of Trial Counsel as a sufficient basis for proceeding with sentencing even with the diagnoses found through the PSI Report.

Further, the "rational understanding" required under *Dusky* means more than being "oriented to time and place" but includes accurate perception of reality and proper response to the world around the defendant, not disruptive behavior and a paranoid relationship with counsel. *Lafferty v. Cook*, 949 F.2d 1546, 1550 (10th Cir. 1991) (quoting *Dusky*, 362 U.S. at

402, 80 S. Ct. at 789). The current record showing the PSI and statements of counsel and the trial court are not sufficient to determine Mr. Newman's rational understanding of the proceedings before him. He was able to answer the court's questions, but it is unclear as to his level of understanding and ability to appreciate their consequences.

Based on the information in the transcripts of the plea, sentencing and the PSI Report, there is a basis for determining that Mr. Newman may not have been competent to stand trial and should have been given a competency hearing and subsequent examination. His competency was not thoroughly addressed by the district court or by his trial counsel.

On direct appeal, the possibility of making a meaningful determination of competency at the time of trial given the passage of time is simply not possible. See *State v. Myers*, 460 N.W.2d 458, 460 (Iowa 1990) (holding failure to hold a competency hearing not capable of cure by an ex post facto determination sometime after trial). As a result, Mr. Newman requests that this Court reverse the judgment of the district court and remand the case for a new trial. In any subsequent trial, the district court should monitor the proceedings and ensure that the defendant's due process and statutory rights related to competency are properly protected throughout the proceedings.

CONCLUSION

For the above stated reasons, Mr. Newman respectfully requests this honorable court reverse and remand the holdings by the district court with instructions specifying that Mr. Newman is entitled to a new trial from the District Court.

NOTICE OF ORAL ARGUMENT

Counsel requests to be heard in oral argument.

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This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words) because this brief contains 2,232 words, excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates.

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Dated: January 30, 2020